IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 509 OF 2004
FROM
(ORDER PASSED BY HIS LORDSHIP MR. JUSTICE
J.N.PATEL ON 21ST JUNE, 2004)
IN
NOTICE OF MOTION NO.1034 OF 2004
IN
SUIT NO.3827 OF 2003

1. Parasmal Uttamchand Jain & anr. ..Appellants

v/s.

1. Chandrakant Hari Thatte & ors .. Respondents

Mr.Rajiv Kumar i/by Mr. Deepak Chitnis for appellants.

Mr.Shekhar Naphade, senior counsel i/by M/s. Bhave & Co. for Respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 17th August, 2004

P.C.

Heard Mr. Rajiv Kumar, the learned counsel for the appellants and Mr. Shekhar Naphade, the learned senior counsel for the respondents.

2. Admit.

3. The advocate on record for the respondents waives service.

4. By consent, appeal is treated on board for final hearing and disposed of finally at this stage.

5. Having considered the averments made in the plaint and the affidavit in support of the notice of motion and the fact that neither any reply affidavit has been filed to the notice of motion nor the averments made in the plaint have so far been traversed by filing written statement, we are satisfied that the order dated 21st June, 2004 calls for modification. We hardly find any justification in withholding the return of earnest money to the plaintiffs-appellants subject to the final decision in the suit and without prejudice to the rights and contentions of the parties.

6. We, accordingly, dispose of this appeal by following order:-

(i) The plaintiffs-appellants shall be at liberty to withdraw the amount of Rs.2,75,000/- deposited by the defendants-respondents on furnishing solvent surety to the satisfaction of the Registrar (O.S.)/Prothonotary & Senior Master.

(ii) In case the plaintiffs-appellants are unable to furnish the solvent surety to the satisfaction of the Registrar (O.S.)/Prothonotary & Senior Master within two months from today, in that event, the Registrar (O.S.)/Prothonotary & Senior Master shall invest the said amount in a term deposit as per the direction given in the order dated 21st June, 2004.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)